

APPEAL NO. 032794
FILED DECEMBER 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 19, 2003. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable occupational disease injury with a date of _____, and that he had disability, as a result of his compensable injury, from November 26, 2001, through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the claimant established the causal connection between his exposure to chemicals in the course and scope of his employment as a mortician/embalmer and his bladder cancer, and in determining that the claimant had disability. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Reversed and a new decision rendered that the claimant did not sustain a compensable occupational disease injury and did not have disability.

An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. . . . The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers' Ins. Ass'n, 612 S.W.2d 199 (Tex. 1980).

The claimant worked for 40 years as a mortician/embalmer and was exposed to large quantities of various chemicals over the course of his career. In support of his assertion that his exposure to those chemicals caused him to develop bladder cancer, the claimant primarily relies on two causation opinions from Dr. C, his treating doctor. In a January 24, 2002, letter, Dr. C states:

This letter is in regards to [claimant], whom I have been treating for bladder cancer. He initially had a resection of his tumor in the bladder on December 2, 2001, with a repeat resection on January 8, 2002. He had made me aware of his occupation, which involves exposure to embalming fluids. It is of [sic] my opinion that his occupation with exposure to these fluids (namely formaldehyde and other benzene derivatives) poses a higher risk of recurrence of his bladder cancer; and this may be responsible for the initial presentation of his bladder cancer.

In a letter dated December 3, 2002, Dr. C again addressed causation, stating “I believe that the primary cause of his bladder tumors has been his occupational exposure to phenol chlorine and other chemicals used in his profession.”

This is a case where expert medical evidence is required to establish the cause of claimant's disease. See *generally* Houston General Ins. Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). In this instance, the claimant's proof of causation needed to show not only that he was exposed to various chemicals over his 40-year career as a mortician/embalmer, but also the causal connection between those chemicals and the development of bladder cancer. The evidence in this case does little more than speculate that the claimant's bladder cancer resulted from his exposure to chemicals at work. Dr. C's causation opinions fall short in that they do not consistently identify the offending agent to which the claimant was exposed nor do they demonstrate the causal link between those chemicals and the development of bladder cancer. In addition, the hearing officer seems to find that the claimant's bladder cancer resulted from exposure to a chemical not mentioned by Dr. C, which is referenced in internet research submitted by the claimant, which simply does not rise to the level of proof of causation to a reasonable degree of medical probability. The evidence in the instant case fails to meet the standard for proving causation by a reasonable degree of medical probability. Accordingly, we reverse the hearing officer's determination that the claimant sustained a compensable occupational disease injury with a date of November 23, 2001, and render a new determination that the claimant's bladder cancer was not a compensable occupational disease injury.

Given our reversal of the hearing officer's determination that the claimant sustained a compensable injury, we likewise reverse the hearing officer's determination that the claimant had disability. By definition, the 1989 Act requires a finding of the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are reversed and a new decision rendered that the claimant did not sustain a compensable occupational disease injury and that he did not have disability.

The true corporate name of the insurance carrier is **NORTHERN INSURANCE COMPANY, A DIVISION OF ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge